

ADVISORY COUNCIL MEETING

Minutes of February 15, 2012

ADVISORY COUNCIL MEMBERS PRESENT

Patrick Early, Chair
Rick Cockrum
Bill Freeman
David Lupke
Jim Trachtman
William Wert

NATURAL RESOURCES COMMISSION STAFF PRESENT

Jennifer Kane

DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT

John Davis	Executive Office
Ron McAhron	Executive Office
Cheryl Hampton	Executive Office
Linnea Petercheff	Fish and Wildlife
Matt Buffington	Fish and Wildlife
Monique Riggs	Water

GUESTS

Barbara Simpson
Jack Corpuz

Call to order

Chairman Patrick J. Early called the meeting to order at 10:41 a.m., EST, at the Fort Harrison State Park Inn, 5830 North Post Road, Roosevelt Room, Indianapolis, Indiana. With the presence of six members, he reported a quorum was not present. In the absence of a quorum, official action was not taken on any agenda item.

Approval of minutes of meeting held on December 14, 2011

The Chair said the minutes of the meeting held on December 14, 2011 would be considered for approval at the Advisory Council's next meeting.

Election of Officers

The Chair announced that because a quorum was not present, the standing officers would remain. The election of officers would occur at the next meeting.

Legislative Update

The Chair asked Ron McAhron to provide a brief legislative update.

Ron McAhron, Deputy Director of the Bureau of Resource Regulation, said HEA 1002 would reduce the members of the Advisory Council from twelve to seven members. There would be a mandatory meeting in January to elect officers. From that point forward rather than a regular every other month meeting, a meeting would be at the call of the Chair.

Rick Cockrum said he attended the legislative meeting. Cockrum explained that the legislative committee asked whether there were ways to make the Advisory Council more efficient. He suggested decreasing the number of mandatory meetings.

William Wert commented, "We kind of worked that way at one time. If there was an agenda, then we would meet."

The Chair said, "The biggest complaint was that we didn't have a quorum often enough. Actually, I think the last three or four meetings we've been pretty successful in getting a quorum until now. It's difficult to get a quorum, because we have had difficulty getting our members replaced."

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, agreed with the Chair.

Cockrum said he informed the legislative committee the Advisory Council is operating with vacancies. But he added that even without a quorum, the Council would review agenda items and by consent make recommendations for Commission approval.

McAhron said "there may be a couple of permanent rule packages ready for Advisory Council consideration" prior to the Commission's May meeting. "I think an April meeting is something to consider."

Consideration of a temporary rule to address water conservation to help implement the Great Lakes-St. Lawrence River Basin Water Resources Compact in the Indiana portion of the Great Lakes Basin; Administrative Cause No. 11-119W

Ron McAhron introduced this item. He said "Indiana was in the forefront of getting the Great Lakes Compact through its legislature." Indiana was the third State to pass the Great Lakes Compact, but the first State in which the provisions of the Compact "have real implications. Part of what we did was put together a package with the legislature

that included some implementation language.” The Indiana statute requires our agency to adopt a rule addressing water conservation and efficiency, and the conservation and efficiency matters in Indiana would be voluntary unless the Indiana General Assembly makes them mandatory. “We have to adopt a rule, but it’s for voluntary measures.” He said a temporary rule was anticipated from the Department Director along the lines of the draft shared with the Council. A proposed permanent rule would later be submitted to the Commission.

Monique Riggs, Environmental Scientist with the Division of Water, said the temporary rule was drafted to address water conservation and to facilitate the implementation of the Great Lakes and St. Lawrence River Basin Water Resources Compact. The proposal would affect the significant water withdrawal facilities in the Indiana’s portion of the Great Lakes Basin. The temporary rule would amend 312 IAC 6.3 to assist in the implementation of Article 4 of the Great Lakes Compact, which pertains to water management and regulation, and would provide for implementation and administration of water conservation and efficiency measures for water withdrawal facilities within the Basin.

Riggs said the temporary rule would allow Indiana to promote and encourage environmentally sound and economically feasible water conservation methods. For the most part, “it’s a voluntary program so it is a little awkward to put in rule form.” The temporary rule would: (1) adopt Basin-wide water conservation goals and methods that were set forth in the Compact; and (2) implement a voluntary program for promoting water conservation and efficiency. A third segment of the temporary rule is a mandatory component that “would only come into play” when a facility applies for a permit to withdraw a certain amount of water. If a facility withdraws 5,000,000 gallons from Lake Michigan, 100,000 gallons from a salmonid stream, or 1,000,000 from any other source (groundwater or surface water), the facility would have to apply for a DNR permit. “It used to be just a registration and a recording program, which will remain so for the rest of the State. But in the Basin, if you meet these criteria, you will have to apply for a permit. As part of that permit, you will be required to submit a water conservation and efficiency plan. That’s the main regulatory component of this emergency rule.”

Riggs added that if a facility is subject to regulation under IC 14-25-15, the facility would have to show it was implementing conservation measures, conducting water audits, and tracking the water losses. She said the temporary rule would primarily affect registered significant water withdrawal facilities. If a significant water withdraw facility were to apply for a permit to increase water withdrawals, the facility would need to submit a water conservation plan to the Division of Water. Riggs said there are 858 registered facilities in Indiana’s portion of the Great Lakes Basin that could potentially be affected. These facilities would be affected only if the facilities apply for an increase of water withdrawal. A new facility requesting to withdraw water for a diversion (taking water taken outside of the Great Lakes Basin) or requesting a consumptive use would be subject to the temporary rule and to the subsequent permanent rule. Riggs said the Division of Water has received feedback from facility operators. “We have already done a lot of

work with and assisted facilities in developing best management practices, and that have been outlined as being acceptable in a conservation plan.”

McAhron said the impetus for the proposal is the statutory requirement to adopt rules. Recently, the Division of Water upgraded its website to include information regarding the voluntary program. “We have done questionnaires. We’ve done educational outreach to try to convey to these folks that conservation is in their best interest financially and certainly environmentally. I’m proud of the program that Monique and Mark Basch have done to do the outreach and try to get people onboard.” McAhron said Indiana traditionally thinks “more of flooding than we do of water shortage. So there was a little bit of a learning curve. I’m pleased with the job we’ve done for that, but it’s not codified. It’s been on the website and in mailings.... We are going to put in place what we’ve been doing already in a rule.”

The Chair asked Riggs to provide an example of an affected water withdrawal facility.

Riggs said the majority of significant water withdrawal facilities in the Basin are “either industrial in nature or irrigators.” Not all facilities are diversions. Most facilities withdraw water and use that water within the Basin.

McAhron said by statute since 1985, anyone in Indiana with the capacity to withdraw in excess of 100,000 gallons of water per day (which is a 70-gallon per minute pump) has been required to register with the DNR. The Compact uses the same 100,000-gallon threshold. “What you do with that water is irrelevant. If you withdraw that much or have the capacity to, you have to be in the program.” The Division of Water sent a cold-mailer survey to registered facilities, and there was more than a “50% response regarding what the facilities were doing—what they thought their needs were. It’s very encouraging.”

The Chair asked whether there was any enforcement as to noncompliance with the rules.

Riggs answered there would not be a penalty under a voluntary program. If a facility did not provide a plan with a permit application in those circumstances where conservation is mandatory, the permit would be denied.

McAhron said a facility requesting a permit to withdraw water from the basin of more than 100,000 gallons would need to provide with the permit application a plan that provides how the facility will conserve water, and how that facility is going to measure and report their water conservation to the Division of Water. “If you are an existing facility you are grandfathered, basically. But if you are going to increase your operation by those threshold numbers, you need a permit. As part of that permit—and a whole bunch of other things—you have to explain to us that you didn’t have an alternative.”

The Chair asked whether the process that McAhron explained was already in place. McAhron answered in the affirmative.

The Chair then asked, “So what is the new part of it?”

Riggs explained the new portion of the temporary rule is the permitting component. The significant water withdrawal facility program has been in place since 1985, which has the threshold withdraw limit of 100,000 gallons a day. She said the 1985 statute is a “purely registration and reporting. There is no permitting involved. If they put in a well or an intake that meets that threshold, they send us location information and other things and they are required to report on an annual basis how much water they use.” The new part of the temporary rule is that if a facility, which has the capacity to withdraw 100,000 gallons per day, wants to come into the Great Lakes Basin, the facility would be required to apply for a permit along with a conservation plan.

John Davis said the voluntary program still exists for the rest of the State.

McAhron said the Compact requires Indiana to have a rule for the voluntary program only in the Indiana portion of the Great Lakes Basin.

Trachtman asked, “Have there been any new, innovative plans, things that are very interesting, or is it just kind of go through the motions” regarding conservation plans that are submitted by facilities.

McAhron said that the Department has had “interesting dialogue with some of the facilities.... We are getting people that are actually looking at moisture meters that would be included as a default or trip in their systems.”

Trachtman then asked what the incentive was for facilities to conserve water other than the facility being a good citizen.

McAhron said that the DNR stresses the “good citizen” factor.

Riggs said water conservation is also directly related to a facility’s bottom line. Irrigators are “not only applying water. They’re applying crop chemicals, fertilizers, herbicides, and those kinds of things. If they can conserve in their delivery of water, they are conserving those chemicals.”

Dave Lupke asked how Indiana’s program compares with other Great Lakes States and to the Canadian Provinces.

McAhron responded that Wisconsin has a very new, but aggressive program. He said Indiana and Wisconsin are considering similar outreach programs for their respective agriculture communities. “We’ve drawn a lot from Illinois and Wisconsin. Again, it’s not so much as mandating these things, but trying to put together a compendium of information sources for people to draw from. We’ve been doing that all along, but now we are trying to put it into some sort of a rule.”

Riggs added that Indiana’s program is also similar to Ohio’s program.

Davis reflected that Indiana registers significant water withdrawal facilities throughout the State. “It seems like eventually wouldn’t we want to have some form of this everywhere? Wouldn’t we want to make sure that anybody who is drilling down into an aquifer is using” best management practices?

McAhron explained that in the Compact there were a series of negotiations. Some of the conservation and efficiency could be mandatory or voluntary. The Indiana General Assembly chose to enact a voluntary program. All 600 registered facilities have been notified of these same principles and ideas regarding conservation and efficiencies. But the Department does not have statutory authority to mandate the program either in the Great Lakes Basin or elsewhere in Indiana.

Consensus existed among the individual members for supporting adoption by Director Rob Carter of the draft temporary rule pertaining to water conservation in the Indiana portion of the Great Lakes Basin.

Consideration of a new nonrule policy for bioengineered materials and techniques for public freshwater lakes, rivers and streams; Administrative Cause No. 09-042W

Linnea Petercheff, Staff Specialist with the Division of Fish and Wildlife, presented this item. She said the Division of Fish and Wildlife’s Environmental Unit developed the nonrule policy document to provide guidance to landowners along public freshwater lakes, rivers, and streams on the use of bioengineered materials and techniques for shoreline protection. “It’s very important for the review of permit applications for construction of new seawalls and refacing of some seawalls in specific areas on public freshwater lakes.

Petercheff said if an area of a public freshwater lake is designated as a “significant wetland” or a “natural shoreline”, by rule, any seawall must be constructed of bioengineered materials. Permit applications sometimes do not meet rule requirements. Usually the biological and structural or mechanical elements are not integrated. Petercheff said the policy would provide detailed guidance to contractors and landowners for implementing approvable bioengineered materials. Although these materials are not required by rule to be used along river banks, “we believe a lot of these techniques and materials would be very useful, especially in areas where we want to make sure that habitat is provided.”

Bill Freeman asked whether the plants listed in Appendix B were all native to Indiana. Petercheff answered in the affirmative.

Freeman then asked whether there were any specifications to help assure vegetative mats and coconut rolls would not contain invasive plants or seeds of invasive.

Petercheff said language could be added to the policy to specify that vegetative mats need to be free of non-native species.

Consensus existed among the individual members in attendance for recommendation of Commission approval of the proposed nonrule policy document.

Consideration of a new temporary and permanent rule to coordinate historic preservation reviews for state agencies proposals that are governed by both Federal and State law; Administrative Cause No. 11-137H

Ron McAhron presented this item. He said this item is an informational item and would not require action by the Advisory Council. McAhron explained the Department has two programs that deal with historic preservation issues. One is a federal program (Section 106, National Historic Preservation Act) that requires a review of a project with Federal funds or Federal licensure. There is a similar Indiana statute that requires review of alterations to a State property or the use of State funds to alter a historic property. “These two [programs] have tremendous overlap, but they have been run in series. So that you would go through the 106 review, the Federal review, and then a State review.”

McAhron said the State’s Historic Preservation Review Board meets quarterly. “So you could easily add a 3-month timeframe that’s redundant before a project could move forward.” He said the draft temporary rule, to be followed by a proposed permanent rule, would maintain the State review process and maintain the penalties of the State process for noncompliance, but have the Federal and State review run simultaneously. The result would be to affect further streamlining and efficiencies. “What we would do...is approve a temporary rule, which we have ability to do under statute, and then come back before the Advisory Council with an amended draft for a proposed permanent rule in April.”

Bill Freeman asked whether Department staff conducts the Federal review.

McAhron answered in the affirmative. “We are the resource agency. It’s the Federal agency’s responsibility to actually make a finding that it is not spending Federal funds or licensing a Federal project that will have an adverse effect.” The Department conducts its review and then makes recommendations to the Federal agency. McAhron said a Department of Transportation highway project requires both Federal and State reviews. “So you could have the 106 review, reach a conclusion, and then start again with the State review.” McAhron said the draft language would synchronize the processes. “I think it’s the right thing to do.”

Adjournment

The meeting adjourned at 11:27 a.m., EST.